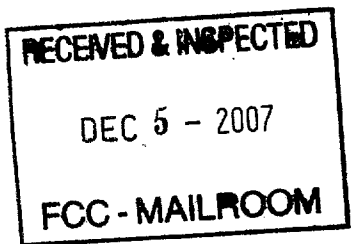


DO NOT REUSE ORIGINAL



RiverStone Partners, LLC
E Rate Consulting

Phone: 908 735 6986
email: erate@earthlink.net

Fax: 908 735 2839

December 3, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capital Heights, MD 20743

CC: 02-6

Subject: Appeal of USAC Funding Decision – Docket 02-6

Request for Waiver

United Talmudical Academy
BEN 11260
471 Applications 479371 and 476114 all Funding Requests

The above two applications submitted in 2005 by United Talmudical Academy in Monroe, NY were denied because, "FCC rules require that a contract for the products/services be signed and dated by both parties prior to the filing of the Form 471. This requirement was not met."

The FCC has previously reviewed and ruled on similar requests in Adams County School District 14 Adopted March 22, 2007 and Released March 28, 2007. As noted in paragraph 10 "... rigid adherence to certain E-Rate rules and requirements that are "procedural" in nature does not promote the goals of Section 254 of the Act... and therefore does not serve the public interest.

Additionally, in paragraph 11 the FCC noted, "Consistent with precedent, we also grant the requests for review in instances where USAC denied funding solely because the execution date of the contract did not accompany the signature lines of the both the applicant and the service provider. We find in these instances that the Petitioners were denied funding by USAC only because the effective date of the contract was separate from the signature lines but the Petitioners has signed and dated contracts in place before the submission of their FCC Forms 471 and thus were in compliance with our rules.

Attached is a copy of the referenced FCC Order.

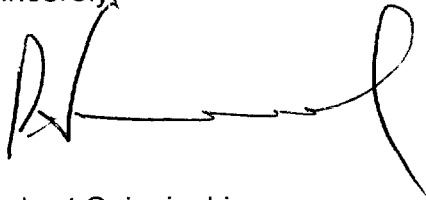
NO. OF COPIES 100/0 041
LISTABCODE

For these reasons we respectfully request that the FCC grant this waiver and request these applications be remanded back to USAC for further review.

I have attached an LOA from United Talmudical Academy.

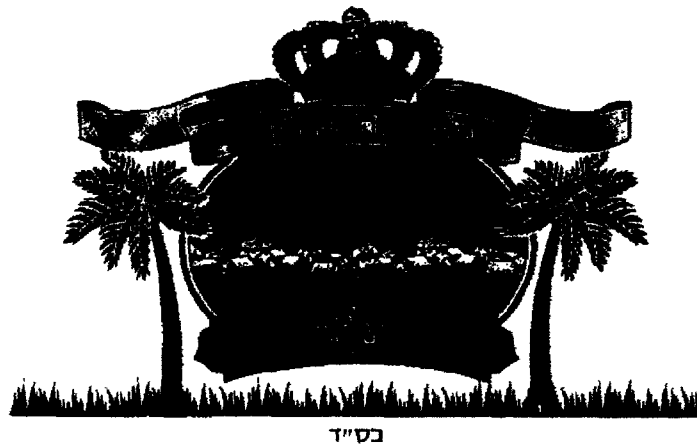
If you require any additional information please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Sniecinski', with a long horizontal stroke extending to the right and a large loop at the end.

Robert Sniecinski
RiverStone Partners, LLC
106 Lilac Drive
Annandale, NJ 08801
908 735 6986
908 735 2839 fax
E mail: erate@earthlink.net

**United
Talmudical
Academy**
of
Kiryas Joel
Inc.



ישיבה
תורה ויראה
ובית רחל
דרבינו יואל
מסאטמאר
קרית יואל

May 19, 20006

To whom it may concern:

Please be advised that this letter authorizes Robert Sniecinski of RiverStone Partners to respond to any request from USAC regarding United Tamudical Academy of Kiryas Joel's E-Rate application.

If you have any questions, feel free to call 845-783-5800.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Wolf Gluck'.

**Mr. Wolf Gluck
Administrative Director**

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Waiver)	
of the Decision of the)	
Universal Service Administrator by)	
)	
Adams County School District 14)	File Nos. SLD-425151, 425211, 425303,
Commerce City, Colorado, <i>et al.</i>)	425352, 426285, <i>et al.</i>
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: March 22, 2007**Released: March 28, 2007**

By the Commission: Commissioner McDowell issuing a statement.

I. INTRODUCTION

1. In this Order, we grant requests by 66 schools and libraries (collectively, Petitioners) for review of decisions by the Universal Service Administrative Company (USAC) denying applications for discounted services under the schools and libraries universal service mechanism (also known as the E-rate program) on the grounds that they violated the Commission's requirement that a legally binding agreement be in place when the FCC Form 471 application is submitted.¹ We also grant six appeals from applicants whose funding commitments were reduced on the grounds that an existing contract expired without the applicant posting a new FCC Form 470 for services to be provided for the remainder of the funding year.² To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in Appendices A and B and issue an award or denial based upon a complete review and analysis no later than 90 days from the release of this Order.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ Our rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek

¹ See Appendix A. In this Order, we use the term "appeals" to refer generically to requests for review of decisions, or to petitions for waivers related to such decisions, issued by the Commission, the Wireline Competition Bureau, or USAC. A list of these filings is attached in the Appendices and we will refer to all of these parties as Petitioners. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Appendix B.

³ 47 C.F.R. §§ 54.502, 54.503.

competitive bids for all services eligible for support.⁴ In accordance with our rules, an applicant must file with USAC an FCC Form 470 requesting services.⁵ After the FCC Form 470 is posted to USAC's web site, the applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471.⁶ Section 54.504(c) of our rules also states that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted "upon signing a contract for eligible services."⁷ Specifically, the instructions for FCC Form 471 state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered on the FCC Form 471.⁸

3. There are two exceptions to this rule: non-contracted tariffed services and certain month-to-month services.⁹ If the services are month-to-month, applicants can instead submit copies of standard monthly bills as proof that they have binding, legal arrangements with service providers.¹⁰ In addition, applicants are instructed to indicate that such situations exist by filling in the abbreviation "MTM" in Item 15 of the FCC Form 471.¹¹

4. To ensure that applicants are in compliance with our competitive bidding rules, applicants must file a new FCC Form 470 when the existing contract ends.¹² When contracts expire at the end of the original term, the applicant must post a new FCC Form 470 for services provided beyond the contract expiration date.¹³ An applicant does not need to post a new FCC Form 470 each year when it has a multi-year contract or when exercising a contract's voluntary renewal provision if the applicant indicated that it was seeking a contract with those terms when it originally filed the FCC Form 470.¹⁴

5. Seventy-two Petitioners have requested a waiver of our rules or a review of USAC's decision to deny funding because they did not have a legally binding agreement in place when their FCC

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

⁵ 47 C.F.R. § 54.504(b); see also *Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (September 1999) (FCC Form 470).

⁶ 47 C.F.R. § 54.504(b)(4); see also *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ 47 C.F.R. § 54.504(c); see also *Request for Review of Waldwick School District, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket No. 02-6, Order, 18 FCC Rcd 22994, 22995, para. 3 (Wireline Comp. Bur. 2003) (*Waldwick Order*); *Request for Review of St. Joseph High School, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 22499, 22500-01, para. 4 (Wireline Comp. Bur. 2002) (*St. Joseph Order*).

⁸ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (FCC Form 471 Instructions) at 19.

⁹ *Id.* Applicants taking services from a filed tariff are not required to have a binding contract because the service is provided by the service provider to all parties at set rates and conditions.

¹⁰ *Id.* at 20.

¹¹ *Id.*

¹² See *Request for Review of New Albany-Floyd County Consolidated School Corporation, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-287615, CC Docket No. 02-6, Order, 20 FCC Rcd 8159, 8160-61, para. 5 (Wireline Comp. Bur. 2005) (*New Albany-Floyd County Order*).

¹³ *Id.* See also USAC website, Contract Guidance, <<http://www.sl.universalservice.org/reference/contract%5Fguidance.asp>> (retrieved Feb. 14, 2007).

¹⁴ *Id.*

Form 471 application was submitted or because their contract expired before the end of the funding year.¹⁵

III. DISCUSSION

6. In this item, we grant relief to 72 Petitioners seeking a reversal of USAC's decisions to deny their requests for universal service funding under the E-rate program. We grant a limited waiver of section 54.504(c) of our rules and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order.¹⁶ To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in Appendices A and B and issue an award or denial based upon a complete review and analysis no later than 90 days from the release of this Order.

7. Petitioners' requests for universal service funding were denied either because they did not have a legally binding agreement in place when their FCC Form 471 application was submitted or because their contract expired before the end of the funding year. Some Petitioners claim that they could not or did not comply with our rules due to conflicting local or state procurement requirements.¹⁷ Other Petitioners claim that their employees erred or they misunderstood the rules.¹⁸ Other Petitioners claim that they technically followed program rules despite USAC's decision to the contrary.¹⁹

¹⁵ See 47 C.F.R. § 54.504(c). Although there is no specific provision in the Commission's rules that requires applicants to file a new Form 470 for services that extend beyond the contract expiration date, this principle is implicit in the program requirement that all services funded by the schools and libraries program be competitively bid. See 47 C.F.R. 54.504(a).

¹⁶ The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ See Request for Review of Adams County School District 14; Request for Waiver of Ballard County School District; Request for Review of Bullock County School District; Request for Review of Chesapeake Public Library System; Request for Review of Churchill County School District; Request for Review of District of Columbia Public Schools; Request for Review of Duluth Public Schools; Request for Review of Guam Department of Education; Request for Review of Holy Family School; Request for Review of Jefferson Parish School District; Request for Review of Merrimack Valley Library Consortium; Request for Review of Metropolitan Dayton Educational Cooperative Association; Request for Review of Missouri Research and Education Network; Request for Review of Monroe County Library System; Request for Review of Milwaukee Public Schools; Request for Review of Saddle Mountain Unified School District # 90; Request for Review of Saint Louis Special School District; Request for Review of Saint Paul Public Schools; Request for Review of San Diego Independent School System.

¹⁸ See Request for Review of Academie Cristo de los Milagros; Request for Review of Amesbury School District; Request for Review of Audre & Bernard Rapoport Academy; Request for Review of Bertie County School; Request for Review of Bourne Middle School; Request for Review of City of Baker School System; Request for Review of Christian Academy of Indiana; Request for Review of Compton Unified School District; Request for Review of Des Moines Public School; Request for Review of Eagle Ridge Academy; Request for Review of FCMA Immokalee Charter School; Request for Waiver of Fulton County School District; Request for Review of Hmong Academy; Request for Review of Information Referral Resource Assistance Independent School District; Request for Review of Institute for Learning Research, Inc.; Request for Review of Kingman Unified School District No. 20; Request

8. Based on the facts and the circumstances of these specific cases, we find that good cause exists to grant a limited waiver of section 54.504(c) of our rules for these Petitioners.²⁰ Competitive bidding requirements serve as a central tenet of the E-rate program. They ensure more efficient pricing for telecommunications and information services purchased by schools and libraries and help deter waste, fraud and abuse. Rigid adherence to the rule in these cases, however, does not further the purposes of the statutory goal mandated by Congress of preserving and advancing universal service for schools and libraries. Furthermore, we note granting these appeals should have minimal effect on the Universal Service Fund (USF or the Fund).²¹

9. The record demonstrates that although some Petitioners technically missed the program deadline for having a written contract in place, they were adhering to local or state procurement laws.²²

for Review of Lapeer District Library; Request for Review of Leland School District; Request for Review of Lincolnville Central School; Request for Review and/or Waiver of Lowell Joint Elementary School District; Request for Review of Nicholas County School District; Request for Review of North Clackamas School District 12; Request for Review of Our Lady Queen of Martyrs School; Request for Review of Parma City School District; Request for Review of RCMA Wimauma Charter School; Request for Review of Russell County Public Schools; Request for Review of Salisbury-Elk Lick School District; Request for Review of Sanborn Regional School District; Request for Review of St. Ignatius School; Request for Review of St. Leo Catholic Urban Academy; Request for Review of St. Matthias School; Request for Review of St. Rose Catholic Urban Academy; Request for Review of Upshur County School District; Request for Review of Wood County Educational Service Center.

¹⁹ See Request for Review of Alder Academy; Request for Review of Andes Central School District; Request for Review of Beacon Academy; Request for Review of Campbell City Schools; Request for Review and/or Waiver of Cristo Rey New York High School; Request for Review of Fox Public Schools; Request for Review of Greater Newark Charter School; Request for Review of Kershaw County School District; Request for Review of Laredo Independent School District; Request for Review of Lexington County School District 1; Request for Review of Madison-Oneida BOCES; Request for Review of Mercedes Independent School District; Request for Review of Miami-Dade County Public Schools; Request for Review of Montgomery County School District; Request for Review of Richmond County School District; Request for Review of Southside Independent School District; Request for Review of Sunnyside Unified School District 12; Request for Review of United Talmudical Academy; Request for Review of Weatherly Area School District.

²⁰ 47 C.F.R. § 54.504(c). We also find good cause to waive the 28-day competitive bidding rule with respect to one funding request number (FRN) for the City of Baker School System (Baker). USAC denied funding for the FRN after finding that Baker awarded the contract before the 28-day period for posting its FCC Form 470 to USAC's website had expired. See 47 C.F.R. § 54.504(b)-(c). We find that Baker misunderstood the competitive bidding rules and did not repost an FCC Form 470 because it had a multi-year contract with its service provider. Because Baker did not indicate that its contract would be multi-year when it originally requested bids, it should have reposted an FCC Form 470 to allow all parties to bid on the contract. We find that, because this contractual agreement was already subject to the Commission's competitive bidding rules when it was first entered into, Baker should not be denied needed funding for these pre-existing contractual agreements and, thus, we waive section 54.504(b) of the Commission's rules in this instance. See 47 C.F.R. § 54.504(b).

²¹ We estimate that the appeals granted in this Order involve applications for approximately \$27.4 million in funding for Funding Years 2001-2006. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2007 (Jan. 31, 2007). Thus, we determine that the action we take today should have minimal impact on the Universal Service Fund as a whole.

²² See Request for Waiver of Ballard County School District; Request for Review of Bullock County School District; Request for Review of District of Columbia Public Schools; Request for Review of Duluth Public Schools; Request for Review of Guam Department of Education; Request for Review of Holy Family School; Request for Review of Institute for Learning Research, Inc.; Request for Review of Jefferson Parish School District; Request for Review of Madison-Oneida BOCES; Request for Review of Merrimack Valley Library Consortium; Request for Review of Metropolitan Dayton Educational Cooperative Association; Request for Review of Milwaukee Public

Others had to have their commitments with service providers approved by their governing boards or their agreements with service providers were contingent upon getting USAC's approval of funding before they could legally enter into the contract.²³ As a result, these Petitioners were unable to sign a legally binding agreement prior to filing their FCC Form 471 as required by section 54.504(c) of our rules.²⁴ Other Petitioners were denied needed funding because of ministerial mistakes.²⁵ For example, Academia Cristo de los Milagros mistakenly noted on its FCC Form 471 that its contract ended nine months before the end of the funding year, thus securing funding for only three months instead of the 12 it intended.²⁶ In another appeal, Compton Unified School District said it submitted the wrong contract to USAC, making it appear as though its FCC Form 471 was submitted before its contract was signed.²⁷ Although the Petitioners missed the deadline for evidencing a signed contract, they had legally binding contracts in place during the relevant funding years. Thus, all Petitioners had some form of an agreement with their service providers before submitting their FCC Forms 471. We find, therefore, that in these specific circumstances, a limited waiver of rule 54.504(c) is warranted.

10. These mistakes do not warrant the complete rejection of these Petitioners' applications for E-rate funding. Importantly, these appeals do not involve a misuse of funds. The Commission recently found in *Bishop Perry Middle School* that, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature does not promote the goals of section 254 of

Schools; Request for Review of Missouri Research and Education Network; Request for Review of Saint Paul Public Schools; Request for Review of San Diego Independent School System. Although these schools had substantially completed their selection process for service providers, the contracts were not in place when the FCC Forms 471 were submitted because of additional steps required by state or local procurement laws.

²³ See Request for Review of Adams County School District 14; Request for Review of Chesapeake Public Library System; Request for Review of Churchill County School District; Request for Review of Fox Public Schools; Request for Review of Monroe County Library System; Request for Review of Saddle Mountain Unified School District # 90; Request for Review of Saint Louis Special School District.

²⁴ 47 C.F.R. § 54.504(c). While the dates vary each year, an FCC Form 471 filing window is typically open from early November to early February preceding the start of the funding year. See USAC website, Schools and Libraries Timetable and List of Deadlines, <<http://www.universalservice.org/sl/tools/calendar-reminders.aspx>> (retrieved Feb. 14, 2007).

²⁵ See Request for Review of Academie Cristo de los Milagros; Request for Review of Amesbury School District; Request for Review of Audre & Bernard Rapoport Academy; Request for Review of Bertie County School; Request for Review of Bourne Middle School; Request for Review of City of Baker School System; Request for Review of Campbell City Schools; Request for Review of Christian Academy of Indiana; Request for Review of Compton Unified School District; Request for Review of Des Moines Public School; Request for Review and/or Waiver of Cristo Rey New York High School; Request for Review of Eagle Ridge Academy; Request for Review of FCMA Immokalee Charter School; Request for Waiver of Fulton County School District; Request for Review of Hmong Academy; Request for Review of Information Referral Resource Assistance Independent School District; Request for Review of Kingman Unified School District No. 20; Request for Review of Lapeer District Library; Request for Review of Leland School District; Request for Review of Lincolnville Central School; Request for Review and/or Waiver of Lowell Joint Elementary School District; Request for Review of Miami-Dade County Public Schools; Request for Review of Nicholas County School District; Request for Review of North Clackamas School District 12; Request for Review of Our Lady Queen of Martyrs School; Request for Review of Parma City School District; Request for Review of RCMA Wimauna Charter School; Request for Review of Russell County Public Schools; Request for Review of Salisbury-Elk Lick School District; Request for Review of Sanborn Regional School District; Request for Review of St. Ignatius School; Request for Review of St. Leo Catholic Urban Academy; Request for Review of St. Matthias School; Request for Review of St. Rose Catholic Urban Academy; Request for Review of Upshur County School District; Request for Review of Wood County Educational Service Center.

²⁶ Request for Review of Request for Review of Academie Cristo de los Milagros.

²⁷ Request for Review of Compton Unified School District.

the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.²⁸

11. Consistent with precedent, we also grant the requests for review in instances where USAC denied funding solely because the execution date of the contract did not accompany the signature lines of both the applicant and the service provider.²⁹ We find in these instances that the Petitioners were denied funding by USAC only because the effective date of the contract was separate from the signature lines but that Petitioners had signed and dated contracts in place before the submission of their FCC Forms 471 and thus were in compliance with our rules.³⁰

12. In all of these cases, there is no evidence in the record that Petitioners engaged in activity to defraud or abuse the E-rate program. Finally, we find that, for these applicants, denying their requests for funding would create undue hardship and prevent these otherwise eligible schools and libraries from receiving E-rate funding. In some instances here we depart from prior Bureau precedent.³¹ For the reasons we describe, however, we find that the departure is warranted and in the public interest.

²⁸ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5316-17, 5319-20, paras. 2, 9 (2006) (*Bishop Perry Middle School*). Moreover, as noted recently in *Bishop Perry Middle School*, many applicants contend that the application process is complicated and time-consuming, and the Commission has started a proceeding to address, among other things, modifying the application and competitive bidding process for the schools and libraries support mechanism. See *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, 11325, para. 40 (2005) (*Comprehensive Review NPRM*); *Bishop Perry Middle School*, 21 FCC Rcd at 5319-20, para. 9.

²⁹ See *Request for Review of a Decision of the Universal Service Administrator by Gayville-Volin School District 63-1, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-471545, CC Docket No. 02-6, Order, 21 FCC Rcd 9274 (Wireline Comp. Bur. 2006); *Request for Review of Richmond County School District, Schools and Libraries Universal Service Support Mechanisms*, File Nos. SLD-451211, 452514, 464649, CC Docket No. 02-6, Order, 21 FCC Rcd 6570 (Wireline Comp. Bur. 2006). To the extent state contract law does not require two signatures and two dates for a valid contract, Commission precedent does not impose such a requirement. We note that in detailing document retention requirements, the Commission required both beneficiaries and service providers to retain executed contracts that are “signed and dated by both parties.” *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15825, para. 48 (2004). We clarify that this language was not intended to establish a new rule regarding the validity of a contractual agreement.

³⁰ See *Request for Review of Aldar Academy*; *Request for Review of Andes Central School District*; *Request for Review of Beacon Academy*; *Request for Review of Greater Newark Charter School*; *Request for Review of Kershaw County School District*; *Request for Review of Laredo Independent School District*; *Request for Review of Lexington County School District 1*; *Request for Review of Mercedes Independent School District*; *Request for Review of Montgomery County School District*; *Request for Review of Richmond County School District*; *Request for Review of Southside Independent School District*; *Request for Review of Sunnyside Unified School District 12*; *Request for Review of United Talmudical Academy*; *Request for Review of Weatherly Area School District*.

³¹ See, e.g., *New Albany-Floyd County Order*, 20 FCC Rcd at 8160-61, para. 5 (finding that applicant must repost FCC Form 470 when contract expires mid-funding year); *Waldwick Order*, 18 FCC Rcd at 22995, para. 3 (denying E-rate funding because applicant did not have signed, binding agreement with service provider); *St. Joseph Order*, 17 FCC Rcd at 22500-01, para. 4 (denying E-rate funding when applicant inadvertently told USAC it did not have a binding agreement even when, in fact, it did).

Accordingly, we find that good cause exists to grant Petitioners a limited waiver of our rules, and remand these matters to USAC for further processing consistent with our decision.³²

13. To assist applicants in successfully applying for funding, we direct USAC to increase its outreach and educational efforts to inform applicants about the program's application requirements in an attempt to reduce these types of errors. We expect that the additional outreach and educational efforts will better assist E-rate applicants in meeting the program's requirements and increase awareness of the filing rules and procedures. As we noted above, we believe that these changes will improve the overall efficiency of the E-rate program and reduce the occurrence of circumstances justifying waivers such as those granted above.

14. We emphasize the limited nature of this decision. As stated above, our competitive bidding rules are important to ensure more efficient pricing for telecommunications and information services purchased by schools and libraries. Although we grant the subject appeals before us, our action here does not eliminate the rule that applicants have a signed contract in place when submitting an FCC Form 471. In addition, we continue to require E-rate applicants to submit complete and accurate contract information to USAC in a timely fashion as part of the application review process.

15. Finally, we are committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeals addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits and investigations to determine compliance with the E-rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules, such proceedings can reveal instances in which universal service funds were improperly disbursed or in a manner inconsistent with the statute or our rules. To the extent we find that funds were not used properly, we will require USAC to recover such funds through its normal processes. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under our procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

16. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the Requests for Review and Requests for Waiver filed by the Petitioners as listed in Appendices A and B ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this Order.

³² We also reverse USAC's denial of funding to District of Columbia Public Schools (District of Columbia) on the ground that the applicant's funding requests included 30 percent or more of unsubstantiated amounts of eligible services. As we recently held in the *Iroquois Order*, the 30 percent rule applies to requests for ineligible services, not for unsubstantiated amounts of eligible services. *Request for Review by Iroquois West School District 10, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-343292, CC Docket No. 02-6, Order, 20 FCC Rcd 540 (Wireline Comp. Bur. 2005) (*Iroquois Order*); 47 C.F.R. § 54.504(d). We therefore direct USAC to fund the previously denied application, if the application is otherwise in conformity with our rules, but to reduce the District of Columbia's funding by the amount of the costs that cannot be substantiated.

17. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that section 54.504(c) of the Commission's rules, 47 C.F.R. § 54.504(c), IS WAIVED to the limited extent described herein.

18. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, USAC SHALL COMPLETE its review of each remanded application listed in Appendices A and B and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this Order.

19. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release, in accordance with section 1.103 of the Commission's rules, 47 C.F.R. § 1.103.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A

No Contract in Place When Application Filed

Applicant	Application Number	Funding Year	Type of Appeal
Adams County School District 14 Commerce City, CO	425151, 425211, 425303, 425352, 426285	2004	Request for Review
Aldar Academy Sacramento, CA	444345	2005	Request for Review
Amesbury School District Amesbury, MA	524312	2006	Request for Review
Andes Central School District Lake Andes, SD	465233	2005	Request for Review
Audre & Bernard Rapoport Academy Waco, TX	504341	2006	Request for Review
Ballard County School District Barlow, KY	368830	2003	Request for Waiver
Beacon Academy Plymouth, MN	477882	2005	Request for Review
Bertie County School District Windsor, NC	400171	2004	Request for Review
Bourne Middle School Bourne, MA	388259	2004	Request for Review
Bullock County School District Union Springs, AL	470756	2005	Request for Review
Campbell City Schools Campbell, OH	503601, 503656, 503719, 503766, 505058, 505093, 505132, 505158, 507528, 507546, 507560, 507569, 507582, 513045	2006	Request for Review
Chesapeake Public Library System Chesapeake, VA	409639, 414295	2004	Request for Review

Churchill County School District Fallon, NV	461600	2005	Request for Review
Christian Academy of Indiana New Albany, IN	468814	2005	Request for Review
City of Baker School System Baker, LA	483704	2005	Request for Review
Compton Unified School District Compton, CA	378434, 378426, 378414	2003	Request for Review
Cristo Rey New York High School New York, NY	468832	2005	Request for Review and/or Waiver
Des Moines Public Schools Des Moines, IA	341871	2003	Request for Review
District of Columbia Public Schools Washington, DC	379940	2003	Request for Review
Duluth Public Schools Duluth, MN	396882	2004	Request for Review
Eagle Ridge Academy Eden Prairie, MN	458813	2005	Request for Review
FCMA Immokalee Charter School Immokalee, FL	466246	2005	Request for Review
Fox Public Schools Fox, OK	467699	2005	Request for Review
Fulton County School District Atlanta, GA	423688	2004	Request for Waiver
Greater Newark Charter School Newark, NJ	509633	2006	Request for Review
Hmong Academy Minneapolis, MN	467565	2005	Request for Review
Holy Family School Sauk Centre, MN	484690	2005	Request for Review
Information Referral Resource Assistance Independent School District McAllen, TX	249067	2001	Request for Review

Institute for Learning Research, Inc. Nashville, TN	481216	2005	Request for Review
Jefferson Parish School District Marreo, LA	343040	2003	Request for Review
Kershaw County School District Camden, SC	466530	2005	Request for Review
Kingman Unified School District No. 20 Kingman, AZ	479031	2005	Request for Review
Lapeer District Library Lapeer, MI	521373	2006	Request for Review
Laredo Independent School District Laredo, TX	454650	2005	Request for Review
Leland School District Leland, MS	367641	2003	Request for Review
Lexington County School District 2 West Columbia, SC	453019	2005	Request for Review
Lowell Joint Elementary School District Whittier, CA	445846	2005	Request for Review and/or Waiver
Madison-Oneida BOCES Verona, NY	401042	2004	Request for Review
Mercedes Independent School District Mercedes, TX	471135	2005	Request for Review
Miami-Dade County Public Schools Miami, FL	354565, 354571 354737, 354745 354754, 354768 354777, 354780 354784, 354785 354825, 354839 355506, 355521 355546, 355587 355620, 355627 355632, 355900 356339, 356354 356410, 356483	2003	Request for Review

	356520, 356525 356527, 356868 356907		
Monroe County Library System Rochester, NY	406926	2004	Request for Review
Montgomery County School District Mount Vernon, GA	532303	2006	Request for Review
Milwaukee Public Schools Milwaukee, WI	354623, 354664, 355875, 355930, 355983, 356089, 356103, 356131, 356135, 356146, 356151, 356155, 356157, 356161, 356413, 356424, 356436, 356466, 356482, 356508, 356526, 359965, 360288, 360321, 360352, 361703, 362581, 380783, 381644	2003	Request for Review
Missouri Research and Education Network Columbia, MO	345858	2003	Request for Review
Nicholas County School District Summersville, WV	417459	2004	Request for Review
Our Lady Queen of Martyrs School New York, NY	511519	2006	Request for Review
Parma City School District Parma, OH	534544	2006	Request for Review
RCMA Mimauma Charter School Mimauma, FL	467631	2005	Request for Review
Richmond County School District Hamlet, NC	464724	2005	Request for Review
Russell County Public Schools Lebanon, VA	459434	2005	Request for Waiver

Saddle Mountain Unified School District # 90 Tonopah, AZ	476327	2005	Request for Review
Saint Louis Special School District Saint Louis, MI	413815	2004	Request for Review
Saint Paul Public Schools Saint Paul, MN	413491, 415327, 413528, 413567	2004	Request for Review
Salisbury—Elk Lick School District Salisbury, PA	459065	2005	Request for Review
Sanborn Regional School District Kingston, NH	449743	2005	Request for Review
San Diego Independent School District San Diego, TX	252293	2001	Request for Review
Southside Independent School District San Antonio, TX	464380	2005	Request for Review
St. Ignatius School Bronx, NY	429540, 429830	2004	Request for Review
St. Leo Catholic Urban Academy Milwaukee, WI	311690	2002	Request for Review
St. Matthias School Ridgewood, NY	336830	2003	Request for Review
St. Rose Catholic Urban Academy Milwaukee, WI	311781	2002	Request for Review
Sunnyside Unified School District 12 Tucson, AZ 85706	451167	2005	Request for Review
United Talmudical Academy Brooklyn, NY	483460	2005	Request for Review
Upshur County School District Buckhannon, WV	353074	2003	Request for Review

Weatherly Area School District Weatherly, PA	532197	2006	Request for Review
Wood County Educational Service Center Bowling Green, OH	463990	2005	Request for Review

Appendix B

Contract Expired Before End of Funding Year

Applicant	Application Number	Funding Year	Type of Appeal
Academia Cristo de los Milagros Caguas, PR	404845	2004	Request for Review
Guam Department of Education Agana, GU	412174	2004	Request for Review
Lincolnton Central School Lincolnton, ME	289286	2002	Request for Review
Merrimack Valley Library Consortium Andover, MA	391277	2004	Request for Review
Metropolitan Dayton Educational Cooperative Association Dayton, OH	389346	2004	Request for Review
North Clackamas School District 12 Milwaukie, OR	510137	2006	Request for Review

**STATEMENT
COMMISSIONER ROBERT M. McDOWELL**

*Re: Requests for Waiver of the Decision of the Universal Service Administrator by
Adams County School District 14, Commerce City, CO, et al., and
Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6*

*Re: Requests for Review of the Decision of the Universal Service Administrator by
Alpaugh Unified School District, Alpaugh, CA, et al., and
Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6*

*Re: Requests for Review or Waiver of the Decision of the
Universal Service Administrator by
Brownsville Independent School District, Brownsville, TX, et al., and
Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6*

By adopting these three orders, we are granting 182 appeals of decisions taken by the Universal Service Administrative Company (USAC) that reduced or denied funding by applicants of the schools and libraries universal service mechanism. This program promotes the noble goal of assisting schools and libraries in the United States to obtain affordable telecommunications and Internet access. I support these decisions for several reasons. First, each of these appeals involves technicalities in the USAC procedures. Our actions here do not substantively alter the eligibility of the Schools and Libraries program. Furthermore, we find no indication of any intention to defraud the system on the part of any of these applicants. Also, our decisions and USAC's actions on appeal should have minimal effect on the level of the Universal Service Fund, because USAC has already reserved sufficient funds to take into account pending appeals. Finally, I am pleased that we impose reasonable time limits on USAC to address these cases on appeal so they can be resolved expeditiously.